

Patton.	Small.
Poage.	Williamson.
Pollard.	Woodruff.
Rawlings.	

Absent.

Beck.	Woodul.
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Absent—Excused.

Russek.

The motion to adjourn until 8:45 p. m., today prevailed by the following vote:

Yeas—15.

Cousins.	Neal.
Hardin.	Parr.
Holbrook.	Patton.
Hopkins.	Poage.
Hornsby.	Pollard.
Loy.	Rawlings.
Martin.	Woodruff.
Moore.	

Nays—11.

Berkeley.	Small.
Cunningham.	Stevenson.
Greer.	Thomason.
Oneal.	Williamson.
Parrish.	Woodward.
Purl.	

Present—Not Voting.

DeBerry.	Gainer.
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Absent.

Russek.

Absent—Excused.

Beck.	Woodul.
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At 8:43 o'clock p. m., the Senate adjourned.

SEVENTEENTH DAY.

Senate Chamber,
Austin, Texas.

Saturday, August 8, 1931.

The Senate met at 8:45 o'clock p. m., pursuant to adjournment, and was called to order by the Lieutenant Governor Edgar E. Witt.

The roll was called, no quorum being present.

On motion of Senator Woodruff, a call of the Senate was ordered for the purpose of obtaining and maintaining a quorum.

The quorum was obtained immediately thereafter, the following Senators answering to their names:

Berkeley.	Neal.
DeBerry.	Oneal.
Gainer.	Patton.
Greer.	Poage.
Hardin.	Pollard.
Holbrook.	Purl.
Hopkins.	Rawlings.
Hornsby.	Small.
Loy.	Williamson.
Martin.	Woodruff.
Moore.	Woodward.

Absent.

Cousins.	Russek
Cunningham.	Stevenson.
Parr.	Thomason.
Parrish.	

Absent—Excused.

Beck.	Woodul
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Prayer by Mrs. Rountree, of the House.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Point of Order.

Senator Woodward raised the point of order that the Senate could not proceed until a calendar was placed on the desks of the Senators.

Senator Woodruff moved to suspend the rule requiring a calendar to be placed on the desks. The motion prevailed by the following vote:

Yeas—16.

DeBerry.	Moore.
Greer.	Neal.
Hardin.	Patton.
Holbrook.	Poage.
Hopkins.	Pollard.
Hornsby.	Purl.
Loy.	Rawlings.
Martin.	Woodruff.

Nays—6.

Berkeley.	Small.
Gainer.	Williamson.
Oneal.	Woodward.

Absent.

Cousins.	Parrish.
Cunningham.	Stevenson.
Parr.	Thomason.

Absent—Excused.

Beck.	Woodul.
Russek.	

House Bill No. 25.

The Chair laid before the Senate on its third reading the following bill:

H. B. No. 25, A bill to be entitled "An Act further prescribing the powers and duties of the Railroad Commission of Texas; further defining and prohibiting waste of oil and gas; amending Article 6014, Revised Civil Statutes of Texas, as amended by Chapter 313, Acts of 1929, Forty-first Legislature of the State of Texas; further defining physical waste of oil and gas, both underground and surface; amending Article 6008, Revised Civil Statutes of 1925, of the State of Texas, requiring gas from gas wells to be confined under the circumstances and conditions therein stated; providing that said Commission shall inquire into the production, storage or transportation of oil and gas and shall prohibit the waste thereof; providing for notice and hearing and for the making of rules, regulations and orders to prevent waste, etc."

Read third time.

On motion of Senator Moore, the previous question was ordered on the final passage of the bill.

The bill was finally passed by the following vote:

Yeas—16.

Berkeley.	Moore.
DeBerry.	Neal.
Greer.	Patton.
Hardin.	Poage.
Holbrook.	Pollard.
Hopkins.	Purl.
Hornsby.	Rawlings.
Loy.	Woodruff.

Nays—4.

Oneal.	Williamson.
Small.	Woodward.

Present—Not Voting.

Gainer.

Absent.

Cousins.	Russek.
Cunningham.	Stevenson.
Parr.	Thomason.
Parrish.	

Absent—Excused.

Beck.

(Pair Recorded.)

Senator Martin (present) who would vote yea with Senator Woodul (absent) who would vote nay.

Senator Pollard moved to reconsider the vote by which the bill was finally passed.

Senator Holbrook moved to table the motion. The motion to table prevailed by the following vote:

Yeas—10.

Hardin.	Moore.
Holbrook.	Neal.
Hopkins.	Patton.
Hornsby.	Pollard.
Loy.	Rawlings.

Nays—8.

Berkeley.	Small.
Oneal.	Williamson.
Poage.	Woodruff.
Purl.	Woodward.

Present—Not Voting.

DeBerry.	Greer.
Gainer.	

Absent.

Cousins.	Russek.
Cunningham.	Stevenson.
Parr.	Thomason.
Parrish.	

Absent—Excused.

Beck.

(Pair Recorded.)

Senator Martin (present) who would vote aye with Senator Woodul (absent) who would vote nay.

Reasons for Vote.

I am voting aye on final passage of substitute to H. B. No. 25 for the reason no other opportunity is

afforded at this time to vote for a stronger bill seeking to conserve the oil and gas resources of this State.

The bill before us does not reflect my ideas of a true conservation measure but is accepted for the reasons above stated.

BERKELEY.

Reasons for Vote.

Attorney General held the Wagstaff Bill partly unconstitutional.

PATTON.

Adjournment.

On motion of Senator Patton, the Senate, at 9:30 o'clock p. m., adjourned until 10 o'clock Monday morning.

APPENDIX.

Committee on Engrossed Bills.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 59, carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 47, carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 46, carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 52, carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Reports.

Committee Room,

Austin, Texas, August 7, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 61, A bill to be entitled "An Act to amend Subdivision (b) of Section 3, S. B. No. 625, Chapter 241, Acts of the Regular Session of the Forty-second Legislature, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

MOORE, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 49, A bill to be entitled "An Act validating all issues of funding and refunding notes, bonds, warrants, time warrants and treasury warrants heretofore issued or authorized to be issued and attempted to be issued by any and all counties in the State of Texas and any and all cities and towns in the State whether incorporated under general or special laws, and all cities operating under charters adopted under provisions of Article 11, Section 5, of the Constitution of Texas, issued and attempted to be issued under authority of H. B. No. 312 of the Forty-second Legislature; etc."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass but that the attached committee substitute do pass in lieu thereof and be not printed.

MOORE, Chairman.

By Williamson. C. S. S. B. No. 49.

A BILL

To Be Entitled

An Act validating all issues of funding and refunding notes, bonds, warrants, time warrants, and treasury warrants heretofore issued or authorized to be issued and attempted to be issued by any and all cities in the State whether incorporated under general or spe-

cial laws, and all cities operating under charters adopted under the provisions of Article 11, Section 5 of the Constitution of Texas, having a population in excess of One Hundred Seventy-five Thousand according to the last preceding United States census, issued and attempted to be issued under authority of H. B. No. 312 of the Forty-second Legislature; and validating all orders of the governing bodies of such cities pertaining to such issues of such funding or refunding notes, bonds, warrants, time warrants and treasury warrants, and all orders by said governing bodies of said cities levying and assessing taxes to provide for the payment of interest and principal of such notes, bonds, warrants, time warrants and treasury warrants as they respectively mature; and declaring an emergency. Be it enacted by the Legislature of the State of Texas:

Section 1. All funding and refunding notes, bonds, warrants, time warrants and treasury warrants heretofore issued or authorized to be issued and attempted to be issued by any and all cities in the State, whether or not incorporated under general or special laws, and any and all cities operating under charters adopted under the provisions of Article 11, Section 5, of the Constitution of Texas, having a population in excess of One Hundred Seventy Five Thousand (175,000) according to the last preceding United States census, and which were heretofore issued, authorized to be issued, or attempted to be issued under authority of H. B. No. 312 of the Forty-second Legislature, are in all respects validated.

Sec. 2. All orders of the governing bodies of such cities authorizing such issues of funding and refunding notes, bonds, warrants, time warrants and treasury warrants, or attempting to authorize the same, or any of the same, are in all respects validated.

Sec. 3. All orders of said governing bodies of said cities directing the levying and assessing of taxes to provide for the payment of interest and principal of such funding and refunding notes, bonds, warrants, time warrants and treasury warrants, as they respectively mature, are in all respects validated.

Sec. 4. The fact that a number of cities of this State of the designated class, operating under general and special charters, and operating under charters adopted under provisions of Article 11, Section 5 of the Constitution of Texas, have issued and authorized to be issued and attempted to issue such funding and refunding notes, bonds, warrants, time warrants and treasury warrants, and the fact that some question has arisen as to the validity thereof, which has resulted in confusion and uncertainty as to validity thereof and has prevented such issues from being approved and has created doubts in the minds of the purchasers as to the validity thereof, and has thereby prevented such cities from financing themselves by means thereof, creates an emergency and an imperative public necessity justifying that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and that this Act shall take effect and be enforced from and after its passage, and said rule is hereby suspended, and it is so enacted.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 43, A bill to be entitled "An Act amending Article 7008, Chapter Seven, Title 121, Revised Civil Statutes of Texas, 1925, so as to empower commissioners' courts of counties not exempted from said Chapter Seven to authorize inspectors of hides and animals thereof, after proper hearing, to charge not to exceed twenty-five cents for each hide or animal inspected and, in inspection of lots of more than fifty hides or animals, not to exceed ten cents each for all hides or animals above that number."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

MOORE, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Judicial Districts, to who was referred

S. B. No. 59, A bill to be entitled "An Act amending Chapter 239, Special Laws of the Regular Session of the Forty-second Legislature of the State of Texas, so as to change the dates of convening the District Court of the 32nd Judicial District of Texas; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PATTON, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 47, A bill to be entitled "An Act amending Article 2832, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill No. 563 approved May 29th, 1931, and repealing all laws and parts of laws in conflict herewith, and declaring and emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Rules, to whom has been referred

Senate Resolution No. 18, to amend Senate Rule 92, Page 219, by inserting after the word "Appeals" in sixth line, the following: "Visitors and friends, by invitation of a Senator, may be allowed the privilege of the space adjacent to the walls so long as they maintain order and decorum."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 56, A bill to be entitled "An Act making an emergency appropriation of money to the Division of Child Welfare of the State Board of Control, for the support, maintenance and operation of said Division for the two years beginning September 1, 1931, and ending August 31, 1933; providing the transfer of a portion of such appropriated amounts from other appropriated funds; prescribing means and manner of expenditure; and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

HARDIN, Vice Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 11, A Bill to be entitled "An Act to amend Senate Bill No. 626, passed by the Regular Session of the 42nd Legislature by adding thereto a new section to be known as Section 1-A, providing for the transfer of a sum of money in the amount of \$635.18 from one appropriation to another appropriation made in House Bill No. 397, passed during the regular session of the 42nd Legislature, 1931, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

HARDIN, Vice Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 52, A bill to be entitled "An Act amending Article 4553 of Chapter 10, commonly known and designated as the Optometry Bill, so as to provide for a State board of Examiners in Optometry composed of six members and providing their necessary qualifications, and amending Article 4554 of said Chapter so as to provide the terms of office of said members of said Board and to

repeal all laws in conflict therewith and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendations that it do pass and be not printed.

MOORE, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt President of the Senate.

Sir: We, your Committee on Congressional Districts, to whom was referred

S. B. No. 64, A bill to be entitled "An Act to apportion the State of Texas into Congressional Districts, naming the counties composing the same, and providing for the election of a member of the Congress of the United States from each district, and repealing all laws and parts of laws in conflict herewith; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

PARRISH, Chairman.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 54, A bill to be entitled "An Act to validate the incorporation of all cities and towns incorporated, or attempted to be incorporated under the general laws of Texas, where, by inadvertence, oversight, or mistake the field notes of such cities or towns were incorrectly set forth, or where any other irregularity was had in the proceeding for the incorporation of such cities or towns, where such cities or towns have been operating and acting as such cities or towns, and where the governing body of such cities or towns has, or have, entered an ordinance correcting and setting forth the true field notes of the territory incorporated or attempted to be incorporated, or where the governing body of such cities or towns has, or have, entered an ordinance correcting such irregularity or irregularities; and declaring an emergency."

Have had the same under consideration, and I am instructed to

report it back to the Senate with the recommendation that it do pass and be printed in the Journal.

MOORE, Chairman.

S. B. No. 54.

By Neal.

A BILL

To Be Entitled

An Act to validate the incorporation of all cities and towns incorporated, or attempted to be incorporated under the general laws of Texas, where, by inadvertence, oversight, or mistake, the field notes of such cities or towns were incorrectly set forth, or where any other irregularity was had in the proceedings for the incorporation of such cities or towns, where such cities or towns have been operating and acting as such cities or towns, and where the governing body of such cities or towns has, or have entered an ordinance correcting and setting forth the true field notes of the territory incorporated or attempted to be incorporated, or where the governing body of such cities or towns has, or have entered an ordinance correcting such irregularity or irregularities; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That where, in any city or town heretofore incorporated or attempted to be incorporated under the general laws of Texas, the petition calling for an election for the purpose of incorporating any such city or town, the order of the County Judge ordering such election, the notice, or notices of such election, the order of the County Judge declaring the result of such election, by inadvertence, oversight, or mistake, contained an incorrect description by metes and bounds of the territory incorporated or attempted to be incorporated as such city or town, or where any other such irregularity in the proceedings for such incorporation was had, and where the governing body of such city or town has entered an ordinance correcting and setting forth the true field notes of the territory so incorporated or attempted to be incorporated, or where such ordinance has been entered correcting any other such irregularity in the proceedings for the incorporation of such city or town, and where such city or town has

been acting or operating as an incorporated city or town, such incorporation, and any and all ordinances correcting the field notes, or any other irregularity of the proceedings had for incorporation, are hereby in all things ratified, confirmed and validated and such cities or towns are hereby declared to be legally and validly incorporated.

Sec. 2. The fact that there are one or more cities and towns in this State, the territory of which has been by inadvertence, oversight or mistake, incorrectly described thereby subjecting incorporation thereof to some question, and the further fact that in some instances slight irregularities have occurred in the incorporation of cities and towns in the State, together with the near adjournment of the present session of the Legislature, creates an emergency and an imperative public necessity demanding the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and said Rule is hereby suspended and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 55, A bill to be entitled "An Act validating and legalizing the authorization of bonds issued by or on behalf of any County, City, District, or political subdivision of this State for the construction of seawalls; validating the levy and assessment of ad valorem taxes in payment thereof; validating the manner of holding the election, canvassing the returns and declaring the result of such elections; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed in the Journal.

MOORE, Chairman.

By Cousins.

S. B. No. 55.

A BILL

To Be Entitled

An Act validating and legalizing the authorization of bonds issued by or on behalf of any County, City,

District, or political subdivision of this State for the construction of Seawalls; validating the levy and assessment of ad valorem taxes in payment thereof; validating the manner of holding the election, canvassing the returns and declaring the result of such election; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That wherever the commissioners' court of any County, or the Governing Body of any City, District or political subdivision of this State has ordered an election for the issuance of Seawall Bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property tax paying voters of such County, City, District, or Political Subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners' Court of such County, or the Governing Body of such City, District or Political Subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the qualified property tax paying voters, voting at such election, and thereupon, by proper order, ordinance or resolution, has authorized the issuance of bonds for the construction of such Seawalls and levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all acts and proceedings had and taken in connection therewith by such commissioners' court, or the Governing Body of any City, District or Political Subdivision in this State, the levy of taxes and the provision made for the payment of the interest and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated; and such bonds so authorized are hereby validated and constituted the legal obligations of such County, City, District or Political Subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and

the Commissioners' Court, or the Governing Body of any such City, District, or Political Subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenue in the time and manner prescribed by statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in Counties and Cities bordering on the Coast of the Gulf of Mexico, and hereby finds that the manner in which any such County, City, District, or Political Subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized.

Sec. 3. The public importance of the purposes herein contemplated creates an emergency and an imperative public necessity requiring the suspension of the Constitutional Rule requiring bills to be read upon three several days in each House, and the said rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Committee Room,

Austin, Texas, August 8, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 35, A bill to be entitled "An Act to amend House Bill No. 312 known as the bond and warrant law of 1931 passed by the Forty-second Legislature at the Regular Session thereof by adding thereto a new section to be designated as Section 11a, providing that nothing contained in said act shall be construed as requiring any city to give any notice as a condition precedent to issuing warrants payable out of current funds of such city, and the issuance of any such warrants by any such city shall not be subject to the terms and provisions of said act; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed in the Journal.

MOORE, Chairman.

By Woodul.

S. B. No. 35.

A BILL

To Be Entitled

An Act to amend House Bill No. 312 known as the bond and warrant law of 1931 passed by the Forty-second Legislature at the Regular Session thereof by adding thereto a new section to be designated as Section 11a, providing that nothing contained in said act shall be construed as requiring any city to give any notice as a condition precedent to issuing warrants payable out of current funds of such city, and the issuance of any such warrants by any such city shall not be subject to the terms and provisions of said act; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That House Bill No. 312 enacted at the Regular Session of the Forty-second Legislature known as the bond and warrant law of 1931 be and the same is hereby amended by adding thereto a new section to be designated as Section 11a, which section shall read as follows:

"Sec. 11a. Nothing contained in this act shall be construed as requiring any city to give any notice as a condition precedent to issuing warrants payable out of current funds of said city and the issuance of any such warrants by any such city shall not be subject to the terms and provisions of this act."

Sec. 2. The fact that it was not the intention of the Legislature to subject cities to the provisions of said act relative to the issuance of warrants payable out of current funds, and whereas there has arisen some confusion as to the interpretation of said act in that respect and same has resulted in handicapping such cities in taking care of their current expenses out of current funds, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said rule is hereby suspended, and this act shall take

effect and be in force from and after its passage, and it is so enacted.

Committee Room,
Austin, Texas, August 8, 1931.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Educational Affairs, to whom was referred

S. B. No. 62, A bill to be entitled "An Act to amend Article 2698, Revised Civil Statutes of Texas of 1925; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed in the Journal.

NEAL, Chairman.

S. B. No. 62.

By Neal.

A BILL
To Be Entitled

An Act to amend Article 2698, Revised Civil Statutes of Texas of 1925; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Article 2698 of the Revised Civil Statutes of 1925 be and the same is hereby amended so as to hereafter read as follows:

"Article 2698. EMERGENCY TRANSFERS. In case of conditions resulting from public calamity in any section of the State such as serious floods, prolonged drought, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden change of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board, be ordered by the State Superintendent to be transferred to any other county or independent school district in any other county; provided, that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur. No application for emergency transfers shall be granted unless the increase in scholastic population, as evidenced by a list of

pupils within the scholastic age actually residing within the district not enumerated in said district, and filed in the State Department of Education is in excess of twenty per cent of the number of children assigned to said district, including regular transfers, as a result of the preceding census. The State Superintendent shall in such case notify the county superintendent of both counties that final apportionment of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made."

Sec. 2. The fact that there are not adequate laws on the Statute books of this State to take care of emergency transfers creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and that this Act shall take effect and be in force from and after its passage and it is so enacted.

Committee Room,
Austin, Texas, August 8, 1931.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 60, A bill to be entitled "An Act to amend Sections 11, 13, 14, and 15 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, and in adding thereto certain new sections to be known as Section 15a, 15b, and 15c; said portion of said act being amended relates to an occupation tax on dealers in cigarettes; providing for the levying and imposition of said tax and the manner and method in which the payment of same shall be evidenced, and prescribing the manner and method in which said stamps shall be placed upon packages or parcels of cigarettes; prescribing the powers and duties imposed upon the State Treasurer of the State of Texas and providing

that one-half of the revenue derived from said tax shall be placed to the credit of the Available School Fund and one-half thereof to the General Revenue Fund of the State of Texas; prescribing certain offenses and providing for punishment and penalties for the violation thereof; prescribing certain civil penalties for failure to comply with the provisions of said act, and providing the manner and method for the collection thereof; prescribing certain duties upon the Comptroller of the State of Texas with reference to issuing certificates to dealers in cigarettes; providing that said act shall be construed as being severable, and if any portion thereof should be declared void it is the intention of the Legislature that the remaining portions thereof shall remain in full force and effect; prescribing that no tax shall be assessed or collected which shall be prohibited by the Constitution of this State or the Constitution of the United States; repealing all laws and parts of laws in conflict herewith, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed in the Journal and not otherwise.

MOORE, Chairman.

By Berkeley.

S. B. No. 60.

A BILL
To Be Entitled

An Act to amend Sections 11, 13, 14, and 15 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, and in adding thereto certain new sections to be known as Sections 15a, 15b, and 15c; said portion of said act being amended relates to an occupation tax on dealers in cigarettes; providing for the levying and imposition of said tax and the manner and method in which the payment of same shall be evidenced, and prescribing the manner and method in which said stamps shall be placed upon packages or parcels of cigarettes; prescribing the powers and duties imposed upon the State Treasurer of the State of Texas, and providing that one-half of the revenue derived from said tax shall be placed to the credit of the Available School Fund and

one-half thereof to the General Revenue Fund of the State of Texas; prescribing certain offenses and providing for punishment and penalties for the violation thereof; prescribing certain civil penalties for failure to comply with the provisions of said act, and providing the manner and method for the collection thereof; prescribing certain duties upon the Comptroller of the State of Texas with reference to issuing certificates to dealers in cigarettes; providing that said act shall be construed as being severable, and if any portion thereof should be declared void it is the intention of the Legislature that the remaining portions thereof shall remain in full force and effect; prescribing that no tax shall be assessed or collected which shall be prohibited by the constitution of this State or the constitution of the United States; repealing all laws and parts of laws in conflict herewith, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Section 11 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, be and the same is hereby amended so as to hereafter read as follows:

"Section 11. In order to supplement the available school fund and to reduce the burden of ad valorem taxation, there is hereby levied and imposed an occupation tax on all dealers and distributors of cigarettes within the State of Texas, whether made of tobacco or any substitute therefor, equal to One Cent (\$0.01) on each package retailing for Five Cents (\$0.05) or less, and upon each package retailing for more than Five Cents (\$0.05), an additional One Cent (\$0.01) for each Five Cents (\$0.05), or fractional part thereof; provided, however, that the tax shall not be considered as a portion of the sale price for the purpose of computing the tax herein imposed.

The tax herein assessed and imposed shall only be paid once, and shall accrue on the first sale, or use within the State of Texas, and the payment of same shall be evidenced by stamps purchased from the Treasurer of the State of Texas and securely affixed to the inner wrapper

of the retail package or container, on the same wrapper and in a similar position as that required by the Internal Revenue Department of the United States of America, but on the opposite end of such package or container; and in no event shall any such dealer be permitted to affix such stamp to any paper of a cellophane or wax nature; such stamps to be legibly cancelled in any convenient manner or method at the time the same are affixed to such packages or containers.

It is provided, however, that such stamps may be purchased, affixed and cancelled to such individual package or container of cigarettes by a manufacturer out of this State, and, in that event, no further payment of said tax shall be required."

Sec. 2. That Section 13 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, be and the same is hereby amended as to hereafter read as follows:

"Section 13. It shall be the duty of the State Treasurer to have engraved or printed stamps of the proper denomination necessary to comply with this Act, and to sell the same to all manufacturers or dealers, upon demand, and one-half of the proceeds of such sale shall be placed to the credit of the State Available School Fund and one-half thereof to the credit of the General Revenue Fund, and the State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales, under his official bond. Such stamps shall be of such design as the State Treasurer shall, from time to time, prescribe, and shall state the amount of tax, the payment of which is evidenced thereby, and shall contain the words, 'Texas State Tax Paid.'

The State Treasurer shall have the power to prescribe such reasonable rules and regulations as he may deem just and proper, from time to time, in order to carry out the provisions of this Act.

If he deems it advisable, he shall have the specific power to issue stamps to any wholesale manufacturer, dealer or distributor, without payment therefor; provided, however, such manufacturer, dealer or distributor executes a good and sufficient Surety Bond, signed by some

solvent Surety Company authorized to do business in this State, and made payable to the State of Texas in double the amount of any stamps which such manufacturer, dealer or distributor may have on hand at any time, conditioned, however, that such manufacturer, dealer or distributor shall account and remit to the Treasurer every ten (10) days for all stamps used by such manufacturer, dealer or distributor.

The State Treasurer shall also be empowered, if he deems it advisable, to place such stamps as he may deem proper with the County Tax Collectors, to be kept and sold by such County Tax Collectors to the public as they may demand the same, and it shall be the duty of such County Tax Collector to accept such stamps when demanded by the State Treasurer, and it shall be his duty to keep such stamps on hand and sell same to the public from time to time, as the Treasurer shall so direct, and such County Tax Collectors shall be required to account and for such to the Treasurer every fifteen (15) days in each month for the sale of the same, and shall be liable to the State of Texas on his official bond for all stamps and moneys which may come into his possession by reason of the sale of the same, to be recovered in a suit brought by the Attorney General in any court in Travis County, Texas, in the event such Tax Collector should default in the duties herein imposed upon him."

Sec. 3. That Section 14 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, be and the same is hereby amended as to hereafter read as follows:

"Section 14. After this Act shall take effect, any person who shall knowingly and wilfully sell, use or offer for sale in this State, either as principal or as agent, any cigarettes, except in packages or parcels bearing the stamps, as required by this Act, properly cancelled, evidencing the payment of the tax thereon as levied and imposed by this Act, shall, for each such sale, offer of sale or use, upon conviction, be fined not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00), or be punished by imprisonment in the county

jail for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment. In addition to the punishment above provided, any person, firm or corporation who shall sell or offer for sale, or aid or abet the sale of any cigarettes in packages or parcels not bearing the stamps, properly cancelled, evidencing the payment of the tax thereon as levied by this Act, shall be liable to the State for a penalty of Five Hundred (\$500.00) Dollars for each such unlawful sale, to be recovered at the suit of the State in any District Court of Travis County for the benefit of the State Available School Fund."

Sec. 4. That Section 15 of House Bill No. 547, Acts of the Forty-second Legislature, Chapter 73, page 111, Laws of the Regular Session, be and the same is hereby amended as to hereafter read as follows:

"Section 15. Any person, other than the State Treasurer or his duly authorized agent, who shall print or engrave or directly aid in or cause the printing or engraving of any stamp or stamps evidencing or purporting to evidence the payment of any tax levied by this Act, or who shall use or consent to the use of any counterfeit or unauthorized stamps, in connection with the sale or offering for sale of any cigarettes, or shall place or cause to be placed on any package or parcel containing or to contain such cigarettes any such unauthorized or counterfeit stamps, or use or attempt to use any stamps which have been cancelled or theretofore used, shall, upon conviction, be punished by imprisonment in the penitentiary for not less than two (2) nor more than twenty (20) years.

"Section 15a. It is the intention of this Legislature, and so provided, that no tax herein imposed shall be collected of or against any dealer of cigarettes which would be a burden upon interstate commerce, or prohibited by the constitution of this State, or the Constitution of the United States. It is further provided that the provisions of this Act are to be construed as being severable, if possible, and especially that portion with reference to the tax on the use of cigarettes, and if any clause,

phrase or provision hereof shall be held to be void, it is the intention of this Legislature that the decision of the court shall not affect or impair any of the remaining provisions, if the remainder of such Act not so declared void can remain operative, and should it be held that the tax herein imposed cannot be legally imposed upon any particular class or group of persons herein specified, then this act shall remain in force and effect as to all other persons, regardless of the inability of the State to tax any particular class of such persons.

"Section 15b. In addition to the tax herein imposed on dealers in cigarettes, there is also imposed an occupation tax of Five Dollars (\$5.00) per year upon every such dealer in cigarettes, the same to be paid annually, and evidenced by a permit or license, to be issued by the Comptroller of Public Accounts for the State of Texas, upon such forms as may be prescribed by the Comptroller, from time to time. And, in the event any such dealer operates more than one place of business, such dealers will be required to obtain a permit or license for each individual place of business and such license or permit shall be, at all times, exposed or displayed in such place or places of business.

Section 15c. All other laws or parts of laws with reference to the imposition of any occupation tax or license tax upon dealers in cigarettes are hereby expressly repealed, and especially Section 12, of Chapter 73, page 111, Laws of the Regular Session of the Forty-Second Legislature."

Sec. 5. The fact that the State of Texas is now operating upon a deficiency basis and that the Available School Fund is depleted and in dire need of funds and the further fact that the present cigarette tax law is so ambiguous and uncertain that the Treasurer of the State of Texas is unable to determine or ascertain upon what part of the package or parcel persons dealing in cigarettes will be required to affix such stamps and who shall be required to affix such stamps,—creates an emergency and imperative public necessity requiring that the Constitutional rule

that Bills be read on three several days should be suspended and that this Act should go into effect from and after its passage, and such rule is hereby suspended, and this Act shall take effect from and after its passage, and it is so enacted.

Opinion by Attorney General.

Offices of the Attorney General.

Austin, Texas, August 7, 1931.
Senator George C. Purl,
Austin, Texas.

Dear Sir:

We have your letter of recent date, which reads as follows:

"Since you will be charged with the enforcement of any act that this Legislature passes, it is highly imperative in my opinion that we know whether or not in your judgment House Bill No. 25, commonly known as the Wagstaff Bill, is unconstitutional or invalid, either in whole or in part, and further whether in your opinion it is sufficiently clear in words and meaning to be enforceable and workable."

In connection with your request you submitted a copy of said House Bill No. 25, as finally passed by the House of Representatives.

In replying we beg leave to state that we have not considered the policy of this bill because that is a matter committed exclusively to legislative determination and in respect to it we express no opinion. We have considered only the constitutionality of the bill and whether it is workable and enforceable.

Oil and gas are natural resources, and the power of the Legislature to prevent physical waste of such resources cannot be successfully denied. (Ohio Oil Company vs. Indiana, 177 U. S. 190). The general power to regulate exists indisputably; therefore, it remains only to be determined in each case whether the regulation is reasonable.

It is obvious that Section 5A of said House Bill No. 25 was largely copied from an Oklahoma Statute. (Section 7957, Revised Statutes of Oklahoma). Among other things it contains the following provisions:

"The Commission is hereby authorized to so regulate the taking of crude petroleum from any or all of the common sources of supply of this State as to prevent the inequitable or unfair taking from a common

source of supply by any person, firm or corporation."

The Oklahoma statute is apparently based upon the theory that the surface proprietors are common owners of a pool and that the Legislature, accordingly, may prevent one surface proprietor from producing more than his "fair" and "equitable" share. (Julian Oil & Royalties Company vs. Capshaw, 292 Pacific 841). In that case the Supreme Court of Oklahoma said:

"And as has already been shown, the State has the power to protect all of the collective owners in a common pool against the disproportionate taking by any one or more of said owners."

However, this is not the law in Texas. Under our law, the surface proprietors are not common or collective owners of the underlying pool. Each proprietor has the right to drill wells on his property and produce such oil as his wells are capable of producing without committing waste, injuring the public interest. (Prairie Oil & Gas Company vs. State, 231 S. W. 1088; Hermann vs. Thomas, 143 S. W. 195; Stephens County vs. Mid-Kansas Oil & Gas, 113 Texas, 160; H. & T. C. Railway Company vs. East, 98 Texas, 146.)

The State, in the exercise of its police power, may prevent physical waste in the production of oil and gas, and for that purpose may curtail the production of any operator or operators, but the State of Texas cannot require that the production be curtailed in order to prevent one surface proprietor from obtaining an "inequitable" or "unfair" share of the underlying pool. If production of an operator is to be curtailed, as we view it, it must be done for the purpose of preventing physical waste; the production of any operator cannot be curtailed in Texas on the theory that he is obtaining more than his "equitable" or "fair" share of the underlying pool.

Section 5A of said bill, in so far as it authorizes the Commission to curtail and prorate takings of oil by different surface proprietors from "a common pool" merely to prevent "inequitable" or "unfair" takings, in our opinion is invalid. In this connection, we call your attention to the fact that the expressions "inequitable" or "unfair" are

so indefinite and uncertain in meaning as probably to be void. Furthermore, if the surface proprietors could be regarded under our laws as common or collective owners of a pool, it is very doubtful whether the Legislature could grant to the Railroad Commission, which is an administrative board, the power to determine whether a certain operator was producing more than his "equitable" or "prorated" share from the pool, since the enforcement and protection of the property rights of the owners are duties committed solely to the courts. In other words, what constitutes the equitable share of the pool owned by any certain surface proprietor or owner is purely a judicial question. (McKnight vs. Board of Water Engineers, 111 Texas, 82.)

The language used in Section 5B of said bill is so vague and general that its meaning is uncertain. For example, the following statement:

"Acreage and potential (or allowable in case of proration) are to be considered in arriving at the respective percentage of oil taken and oil for which there is an available market."

The same comment applies to Section 5C, a portion of which we here quote:

"Any oil operator in this State who is not producing and selling his percentage allowed under orders of the Railroad Commission, and who has no market for said allowable production, may extend a pipe line from his lease or producing tract of land to the pipe line of any purchaser or common carrier of oil operating in this State and said purchaser or common carrier of oil shall permit said connecting line so constructed to be tied into the pipe line or common carrier of oil of any said purchaser, and in the event the said purchaser or common carrier is unable or unwilling to equalize the outlet for such operator by purchasing from said producer, who so constructed said tying line, and amount of oil sufficient to bring the sold percentage of the allowable of said producer up to the point where said sold percentage of the allowable of said producer equals the sold percentage of the allowable of any other producer whose oil, or oil produced by such other producer though sold to another, is transported by said common carrier pipe line, then in

that event said common carrier or purchaser shall reduce the amount of oil purchased, taken and/or transported by it so that the percentage of the allowable of any producer's production carried or transported by it shall not exceed the percentage of the allowable of said producer constructing said tying line for which said tying producer has a market."

To make the bill workable and enforceable it occurs to us that it would be highly desirable to eliminate language as uncertain in meaning as the above quoted portions of Section 5B and 5C.

The bill unquestionably contains inconsistent provisions, for instance, among other things, Section 2 provides that:

"... no part of this Act shall ever be construed to permit consideration to be given to market demand."

And:

"Provided further that no part of this Act shall ever be construed to prevent storage of oil."

While Section 5B provides that no producer or purchaser operating a pipe line or transporting oil through a common carrier pipe line or by railroad tank cars, and no common carrier or pipe line not engaged in purchasing oil but transporting the same,

"Shall purchase, take or transport a greater percentage of oil from his or its own leases or from the seller or shipper from any lease than the available market offered the lessor or lessee on any other lease in the same pool."

From the above quotations it is obvious that this is a far broader provision than the one contained in the common purchaser law. It makes it unlawful to transport through any of the available means of transportation, including railroad tank cars, any greater quantity of oil from a given lease "than the available market offered the lessor or lessee on any other lease in the same pool." We cannot escape the conclusion, therefore, that in practical operation, it would require proration of production in accordance with the condition of the "available market." The operator or producer, who might be unable by any means to secure transportation from his lease for any more oil than his share of the "market," his production in practical ef-

fect would be prorated to his share of the market. If valid, this section is clearly in conflict with that portion of Section 2 of said bill which provides in substance that no consideration is to be given to "market demand."

Section 5D provides that where the Commission requires a reduction or a proration of the production of oil from any pool or area, it shall, in making its "allocations of oil to purchasers," first meet the requirements and bona fide offers to purchase, with available transportation facilities, price offered being equal, of refineries located in the State before making allocations to purchasers of oil to be transported out of the State. This language we think is inconsistent with the declaration made in Section 2 of said bill to the effect that market conditions shall be given no consideration. Moreover, the provisions are of doubtful validity since it occurs that they would operate as a direct burden on interstate commerce.

(West vs. State of Oklahoma,——).

Sections 6 and 7 grant the right of judicial review to any party who is dissatisfied with any order, rule or regulation of the Railroad Commission, since, of course, the right of judicial review is essential to the validity of such a statute. (Chicago, Milwaukee & St. Paul Railway Company vs. Minnesota, 154 U. S. 458.) The right granted must be:

"substantial, equitable and safely available; it must not be burdened by such bonds and liabilities as would deter the ordinary person from resorting to the remedy, that is, such as would make him comply with the order rather than assume the burdens and results incident to the remedy." (Wadley Southern Railway Company vs. State of Georgia, 235 U. S. 651; Mercantile Trust Company vs. Texas & Pacific Railway Company, 51 Federal, 529.)

In all such cases the power of the Court to give relief should be ample and independent; it should extend to the law and facts of the case unaffected by the action of the Railroad Commission. In *Ohio Valley Company vs. Borough*, 253 U. S., 284, the Court said that where under such orders, the owner claimed confiscation of his property.

"the State must provide a fair

opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts, otherwise, the order is void because in conflict with the due process clause, 14th amendment."

Section 7 provides that when any suit is brought by aggrieved parties, the Commission shall be entitled to the immediate issuance of an injunction "to require complainant to obey such rule, regulation or order pendente lite, and it shall be the duty of the Commission to apply for such injunction." The Commission is not required to give any bond or give any showing, either on the law or facts. The issuance of the injunction in its favor is mandatory, no discretion being committed to the reviewing Court. This might be considered as an usurpation of judicial powers.

The same section further provides that such injunction issued in favor of the Commission must remain in force until the complainant give a bond and obtains an injunction for himself, if he can. The complaining party cannot defeat the Commission's application for an injunction by interposing a defense that the order sought to be enforced is not valid or that it would be inequitable, under the circumstances, to grant the Commission an injunction. Said bill gives him no defense as against the Commission's application, and the Court is required under said bill to grant the Commission's application without regard to its merits, and the plaintiff's only remedy is to then present his own application and if granted, make the bond required. He cannot obtain such injunction, however, without giving a bond sufficient in amount not only to indemnify the State, but also to indemnify all persons who might suffer damage by reason of his failure to observe the rule during the pendency of the litigation, and all such persons are given the right to sue on such bond. If, for any reason, the complaining party is unable to make a bond, then he cannot obtain his injunction, and the injunction issued in favor of the Commission without bond and without any discretion on the part of the Court, remains in force. The bill provides further that if he is able to make the bond, however, that he

will not be entitled to an injunction until after reasonable notice to the Commission, and a hearing making a clear showing that the order is invalid, and that he will suffer irreparable injury.

Without descending into further details, in our opinion it is doubtful whether the right of judicial review granted under this bill satisfies the requirement of the due process clause under the 14th amendment to the Federal Constitution. (*Wadley Southern Railway Co. vs. State of Georgia*, supra; *Ohio Valley Company vs. Borough*, supra; *Mercantile Trust Company vs. Texas and Pacific Railway Co.*, supra; *Louisiana and Nashville Railroad Company vs. McChord*, 103 Federal Reports 216; *Cotton vs. Kansas City Stock Yards*, 183 U. S. 79; *Consolidated Gas Company vs. Mayer*, 146 Federal Reports 150; *ex parte Wood*, 155 Federal Reports 190; *Consolidated Gas Company vs. New York*, 157 Federal Reports 849; *Ex parte Young*, 209 U. S. 123; *Wilcox vs. Consolidated Gas Co.* 212 U. S. 19; *Missouri Pacific Railway Company vs. Nebraska*, 217 U. S. 196; *Missouri Pacific Railway Company vs. Tucker*, 230 U. S. 340; *Bonnett vs. Vallier*, 136 Wisconsin 193; *Coal Coke Railway vs. Conley*, 67 West Virginia 129.)

It was held in practically all of the cases cited in the preceding paragraph that the imposition of liability for penalties upon a complainant during the time his review suit is pending, will render that part of such a statute unconstitutional. The principle underlying this holding is not limited merely to the imposition of penalties, but it is a broad principle of constitutional law. It evidently means that a fair opportunity to test the orders, rules and regulations of an administrative board must be provided and that the imposition of any liabilities or burdens such as would deter a person of ordinary prudence from filing suit to test the validity of such an order, rule or regulation, will render a Statute unconstitutional. (See authorities last above cited.) In the *Mercantile Trust Company vs. Texas and Pacific Railway Company* case, supra, the Court stated:

"Statutory provisions imposing penalties tending to embarrass a

party in appealing for protection against taking property without due process of law were held to be void."

In the case of *Cotting vs. Kansas City Stock Yards*, supra, the Supreme Court stated that,

"an act which opened the doors of the courts but placed upon the litigant a penalty for failure to make good his defense, which was so great as to deter him from asserting that which he believed to be his right, was tantamount to a denial of the equal protection of the law."

We also call your attention to the fact that the bill in question contains various general and vague expressions, such as "unnecessary, inefficient, excessive or improper," as used in Section 2. "Inequitable" or "unfair," as used in Section 5A. It is our opinion that a bill which provides heavy civil penalties for the violation of an order should be couched in "such certain terms that the party upon whom it is to operate may with reason, ascertain what the Statutes require to be done and when it must be done, otherwise, there would be no opportunity for a person charged with the duty to protect himself by the performance of it according to law." (*M. K. & T. Railway Company vs. State*, 100 Texas, 420.)

We have not discussed herein the opinion of the Three Judge Federal Court written by Justice Hutcheson of the U. S. Circuit Court of Appeals of New Orleans in the case of *McMillan Petroleum Corporation vs. Railroad Commission of Texas*, since we notice the opinion was printed in the Senate Journal, and we are sure you are familiar with the contents thereof.

We believe that the above discussion clearly answers the two questions contained in your request.

In view of the seriousness of the questions which are presented in a consideration of this bill and the great number of authorities which necessarily must be studied in passing on its legality it has been impossible for all the members of this Department to investigate same in view of the shortness of time. I wish it to be clearly understood, therefore, that the foregoing opinion expresses the views of the writer only on the question presented.

Yours very truly,

FRED UPCHURCH,
Assistant Attorney General of Texas.

EIGHTEENTH DAY.

Senate Chamber,
Austin, Texas,
August 10, 1931.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parr.
Berkeley.	Parrish.
Cousins.	Patton.
Cunningham.	Poage.
DeBerry.	Pollard.
Gainer.	Purl.
Greer.	Rawlings.
Hardin.	Russek.
Holbrook.	Small.
Hopkins.	Stevenson.
Hornsby.	Thomason.
Loy.	Williamson.
Martin.	Woodruff.
Moore.	Woodul.
Neal.	Woodward.
Oneal.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Purl:

S. B. No. 65, A bill to be entitled "An Act providing for the issuance of licenses for life, health and accident insurance agents, and the cancellation thereof, regulating the conduct of persons and companies with reference to acting as, and through, life insurance agents, providing penalties, repealing laws in conflict, and declaring an emergency."

Read and referred to Committee on Insurance.

By Senators Hornsby and Purl:

S. B. No. 66, A bill to be entitled "An Act providing that warrants drawn on the State Treasurer, if presented for payment and not paid, shall automatically bear interest un-

til called for payment at the rate of six per cent (6%) per annum, and declaring an emergency."

Read and referred to Committee on Finance.

S. C. R. No. 9.

Senator Hornsby sent up the following resolution:

Whereas the recent government report shows that the surplus cotton that will be left on hand at the end of 1931 will be the greatest in history, and

Whereas in the face of this report the cotton market broke so that middling cotton is now selling on the stock exchanges at less than 7½ cents and is bringing in farmers 6 cents on the local markets, and

Whereas unless we can find additional uses for cotton, the price of the coming crop will be far less than ever before and much less than the cost of production, which condition will spell ruin to the people of Texas and other cotton growing states;

Therefore be it resolved by the Senate of Texas, the House of Representatives concurring: That the Highway Department of the State of Texas be, and is hereby, requested and urged to specify the use of a loosely woven cotton bagging for the "curing" of concrete, instead of the burlap which is now specified and used; and be it further resolved that all counties, cities and other political subdivisions of this State be requested and urged to use such cotton bagging for "curing" all their concrete construction; and further that copies of this resolution be furnished the press and sent to the Highway Department of the several states and to the U. S. Bureau of Public Roads at Washington, D. C.

HORNSBY.

The resolution was read and adopted by the following vote:

Yeas—23.

Beck.	Parr.
Berkeley.	Parrish.
Cousins.	Patton.
Cunningham.	Poage.
DeBerry.	Purl.
Gainer.	Rawlings.
Greer.	Russek.
Hardin.	Small.
Hornsby.	Stevenson.
Loy.	Thomason.